

**REMARKS**

**A. Request For Continued Examination**

Herewith, Applicants submits a Request for Continued Examination to further prosecution in accordance with the requirements of the Advisory Action mailed September 29, 2005. Entry of the RCE and substantive examination is respectfully requested.

**B. Status of the Claims**

The Advisory Action mailed September 29, 2005 notes that amendments to the claims in an Amendment After Final dated May 31, 2005 were not entered. Accordingly, claims 25-27, 29-46, 50-61, and 74-91 are currently pending. By the present amendment, claims 40, 75, 82, and 84-91 have been canceled. Claims 26-27, 29-38, 50-61, 76-81 have been withdrawn as being directed to non-elected inventions and Applicants herein reserves all rights to file divisional applications directed to the non-elected inventions. Claims 25, 39, 41, 42, 74, and 83 have been amended. New claims 92-115 are added by the present amendment. Thus, claims 25, 39, 41-46, 74, 83 and 92-115 are currently under examination. No new matter has been added with these amendments.

**C. The Claims Are Enabled**

The Advisory Action mailed September 29, 2005 maintained the rejection of claims 39-45, 74-75, 82-83, and 84-91 for lack of enablement on the grounds that the

specification was not enabling for all antigenic fragments of SEQ ID NOs:7, 9, 11, and 13. The Action did indicate, however, that the specification was enabling for *Chlamydia psittaci* antigens having sequences corresponding to SEQ ID NOs: 7, 9, 11, and 13. Although Applicants disagree with this position, the current claims are directed to subject matter that it appears the examiner considers enabled. For example, independent claim 25 is directed to a method of immunizing an animal comprising administering to the animal a *Chlamydia psittaci* antigen having a sequence of SEQ ID NO:7 in an amount effective to induce an immune response against *Chlamydia psittaci*. Independent claim 92 likewise includes recitation of an antigenic structure as well as recitation of additional active steps in the claimed methods. Applicants intend to pursue claims to broader subject matter in continuing applications.

Accordingly, applicants respectfully request the withdrawal of this rejection.

#### **D. The Claims Are Definite**

The Action rejects claims 25, 39-45, 74-75, and 82-84 under § 112, second paragraph, as being indefinite. Specifically, the Action asserts that the recitation of “providing to the animal” in claim 25 is unclear. Although Applicants maintain that the recitation “providing to the animal” in the context of a method of immunizing an animal is reasonably clear to those of ordinary skill in the art, Applicants have amended claim 25 by replacing “providing” with “administering.” Applicants, therefore, request the withdrawal of this rejection.

The Action also rejects claims 39-45, 74-75, and 82-84 as indefinite for failing to further limit claim 25. In particular, the Action asserted that the phrase “and fragments thereof” made claims 39-45, 74-75, and 82-84 broader than claim 25. The current claims do not contain the phrase “and fragments thereof.” Applicants, therefore, request the withdrawal of this rejection.

Applicants respectfully submit that new claims 92-115 recite methods of immunizing in accordance with the Examiner’s suggestions and are therefore sufficiently definite.

**E. The Rejections Under 35 U.S.C. § 102 Are Overcome**

The Advisory Action maintains the rejection of claims 25, 39, 41, 43, 45, and 82-83 under § 102(e) as being anticipated by Griffais *et al.* (U.S. Patent No. 6,559,294). The Action also rejects the same claims under § 102(b) as being anticipated by Griffais *et al.* (WO 99/27105). As aforementioned in this prosecution, the disclosures of U.S. Patent No. 6,559,294 and WO 99/27105 are the same and for convenience, applicants will refer to the publications collectively as “Griffais, *et al.*”

Applicants respectfully traverse the rejections.

Applicants respectfully submit that Griffais, *et al.* does not teach or enable each of the claimed elements of independent claims 25 and/or 92, either expressly or inherently. Applicants note *In re Wilder*, 429 F. 2d 447, 166 USPQ 545, 548 (C.C.P.A. 1970) which states that a prior art reference “may yet be held not to legally anticipate the claimed

subject matter if it is found not to be sufficiently enabling. In other words, if it does not place the subject matter of the claims within the possession of the public.” The description must enable a person of ordinary skill in the art not only to comprehend the claimed invention, but also to make it, *see, Paperless Accounting, Inc. v. Bay Area Rapid Transit Sys.*, 804 F. 2d 659, 665, 231 USPQ 649, 653 (Fed. Cir. 1986).

The present claims are generally directed to a method of immunizing an animal comprising administering to the animal a *Chlamydia psittaci* antigen having a specific SEQ ID NO in an amount effective to induce an immune response against *Chlamydia psittaci*. Simply stated, Applicants respectfully assert that Griffais, *et al.* does not teach or enable 1) immunizing an animal with a *Chlamydia psittaci* antigen; 2) administering to an animal a *Chlamydia psittaci* antigen effective to induce an immune response against *Chlamydia psittaci*; 3) administering to an animal a *Chlamydia psittaci* antigen having either SEQ ID NO 7 or SEQ ID NO 9; 4) preparing and administering a second *Chlamydia psittaci* antigen effective to induce an immune response against *Chlamydia psittaci*; 5) a method where a first and second *Chlamydia psittaci* antigen are administered to an animal to induce an immune response against *Chlamydia psittaci*; and/or 6) administering to a bovine or human a *Chlamydia psittaci* antigen effective to induce an immune response against *Chlamydia psittaci*. Such subject matter (as well as additional claimed subject matter not noted above) is not placed within the possession of the public by Griffais, *et al.* Accordingly, Griffais, *et al.* is not a reference that teaches or

enables each of the claimed elements of the present application, either expressly or inherently.

Griffais, *et al.* merely lists the entire genome sequence and completely fails to identify any functional characterization for any specific portions of the sequence. In other words, Griffais, *et al.* does not teach what portion of the entire genome to use to achieve the biological responses disclosed in the instant disclosure. Additionally, Griffais, *et al.* does not show any expression nor teach that the protein is an immunogen. Finally, Griffais, *et al.* does not set forth any animal experiments to identify such functional characteristics. Even if the genes are homologues, there is no basis for making conclusion that certain genes would provide the same type of immune protection. Thus, Griffais, *et al.* teaches no functional characterizations of any gene for functional efficacy – it simply lists sequences. The difficult elucidation of functional sequences from the genome is what is detailed in the present application.

Furthermore, it appears that the Examiner agrees that SEQ ID NO:7, as well as SEQ ID NOs:9, 11, and 13, are novel over the Griffais references (*see* Office Action mailed May 31, 2005 at p. 9, 11). Thus, for an additional reason, Griffais *et al.* does not anticipate the current claims.

Accordingly, applicants, request the withdrawal of the rejections under 35 U.S.C. § 102.

**F. The Objection to Claim 86**

The Action objects to claim 86 for containing a typographical error. This objection is moot in view of the cancellation of claim 86.

**G. The Written Description Rejection**

Claims 40, 42, 74-75, and 85-91 were rejected for introducing new matter. Applicants disagree with this rejection, as support for the language accuses of being “new matter” can be found in the specification at page 13, lines 10-18. Nevertheless, this rejection is moot in view of the language of the current claims. Applicants, therefore, request the withdrawal of this rejection.

**H. Consideration of Additional Species**

In response to a second species election requirement, Applicants elected SEQ ID NOs: 11 and 13 for examination. Applicants respectfully asserts that Claim 41 is a generic linking claim that links SEQ ID NOs: 11 and 13 and the non-elected species (*i.e.*, SEQ ID NOs: 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, and 69). For the reasons described above, Applicants believe that claim 41 is in condition for allowance. Under 37 C.F.R. § 1.141(a), Applicants are entitled to the examination of a reasonable number of the non-elected species once an allowable claim generic to all of the species has been identified. Applicants, therefore, request the examination of the linked species.


**I. Conclusion**


Applicants believe this to be a full and complete response to the Office Action dated May 31, 2005 and the Advisory Action mailed September 29, 2005. Applicants, therefore, respectfully request that the rejections to all claims be withdrawn so they may pass to issuance.

The Examiner is invited to contact the undersigned attorney at (414) 271-7590 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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